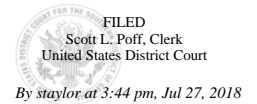


**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**



SHAMPOIRE VALENTINO ORANGE,

Plaintiff,

v.

SERGEANT ANTONIO JONES;
SERGEANT ERIC ROZIER; COLONEL
JUDY LOWE; and GLYNN COUNTY
DETENTION CENTER,

Defendants.

CIVIL ACTION NO.: 2:18-cv-36

ORDER and MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, who is currently housed at the Bulloch County Sheriff's Office in Statesboro, Georgia, filed a Complaint pursuant to 42 U.S.C. § 1983 contesting certain events which allegedly occurred while he was housed at the Glynn County Detention Center in Brunswick, Georgia. (Doc. 1.) Plaintiff also filed Motions for Leave to Proceed *in Forma Pauperis* and for Leave to File an Amended Complaint. (Docs. 2, 3.) For the reasons set forth below, the Court **DENIES** Plaintiff's Motion for Leave to Proceed *in Forma Pauperis* and **DISMISSES as moot** his Motion for Leave to File an Amended Complaint. For these same reasons, I **RECOMMEND** the Court **DISMISS** Plaintiff's Complaint, **DIRECT** the Clerk of Court to **CLOSE** this case and enter the appropriate judgment of dismissal, and **DENY** Plaintiff *in forma pauperis* status on appeal.

BACKGROUND

In his Complaint, Plaintiff contends Defendant Rozier deployed his taser against Plaintiff on December 16, 2017, but he missed because Plaintiff shielded himself with his mattress.

(Doc. 1, p. 5.) Plaintiff asserts Defendants Rozier and Jones handcuffed and fully shackled him, even though Plaintiff was no threat to officer safety, and Defendant Jones placed his taser on Plaintiff's bare skin before deploying his taser. Plaintiff also asserts he was strip searched on November 26, 2017, and all of his personal property was taken. (Id. at p. 2.) According to Plaintiff, Defendant Lowe ordered officers to harass Plaintiff by putting him on two-man status. Plaintiff maintains his cell was searched every day from November 26, 2017, until his transfer from the Glynn County Detention Center on January 23, 2018. (Id.)

STANDARD OF REVIEW

Plaintiff seeks to bring this action *in forma pauperis*. Under 28 U.S.C. § 1915(a)(1), the Court may authorize the filing of a civil lawsuit without the prepayment of fees if the plaintiff submits an affidavit that includes a statement of all of his assets, shows an inability to pay the filing fee, and also includes a statement of the nature of the action which shows that he is entitled to redress. Even if the plaintiff proves indigence, the Court must dismiss the action if it is frivolous or malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B)(i)–(ii). Additionally, pursuant to 28 U.S.C. § 1915A, the Court must review a complaint in which a prisoner seeks redress from a governmental entity. Upon such screening, the Court must dismiss a complaint, or any portion thereof, that is frivolous, malicious, or fails to state a claim upon which relief may be granted or which seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

The Court looks to the instructions for pleading contained in the Federal Rules of Civil Procedure when reviewing a complaint on an application to proceed *in forma pauperis*. See Fed. R. Civ. P. 8 (“A pleading that states a claim for relief must contain [among other things] . . . a short and plain statement of the claim showing that the pleader is entitled to relief.”); Fed. R.

Civ. P. 10 (requiring that claims be set forth in numbered paragraphs, each limited to a single set of circumstances). Further, a claim is frivolous under Section 1915(e)(2)(B)(i) “if it is ‘without arguable merit either in law or fact.’” Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002) (quoting Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001)).

Whether a complaint fails to state a claim under Section 1915(e)(2)(B)(ii) is governed by the same standard applicable to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). Thompson v. Rundle, 393 F. App’x 675, 678 (11th Cir. 2010) (per curiam). Under that standard, this Court must determine whether the complaint contains “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A plaintiff must assert “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not” suffice. Twombly, 550 U.S. at 555. Section 1915 also “accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” Bilal, 251 F.3d at 1349 (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)).

In its analysis, the Court will abide by the long-standing principle that the pleadings of unrepresented parties are held to a less stringent standard than those drafted by attorneys and, therefore, must be liberally construed. Haines v. Kerner, 404 U.S. 519, 520 (1972); Boxer X v. Harris, 437 F.3d 1107, 1110 (11th Cir. 2006) (“*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys”) (quoting Hughes v. Lott, 350 F.3d 1157, 1160 (11th Cir. 2003)). However, Plaintiff’s unrepresented status will not excuse mistakes regarding procedural rules. McNeil v. United States, 508 U.S. 106, 113 (1993) (“We have never

suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.”).

DISCUSSION

I. Plaintiff’s Complaint is Duplicative

Although Plaintiff filed this pleading as a petition for writ of habeas corpus, he previously filed a cause of action in Case Number 2:18-cv-1, Orange v. Lowe. Pet., Orange v. Lowe, 2:18-cv-1 (S.D. Ga. Jan. 8, 2018), ECF No. 1. The Court informed Plaintiff that his claims sounded in civil rights, not habeas corpus, and directed Plaintiff to file a complaint pursuant to Section 1983. Order, Orange v. Lowe, 2:18-cv-1 (S.D. Ga. June 26, 2018), ECF No. 4. Plaintiff filed a complaint in response to this Court’s Order. Compl., Orange v. Jones, 2:18-cv-1 (S.D. Ga. July 6, 2018), ECF No. 5. In his complaint in Case Number 2:18-cv-1, Plaintiff makes the same assertions as he does in the instant Complaint. Id.

“It is well settled that a plaintiff may not file duplicative complaints in order to expand [his] legal rights.” Vanover v. NCO Fin. Serv., Inc., 857 F.3d 833, 841 (11th Cir. 2017) (quotations and citations omitted); see also Curtis v. Citibank, N.A., 226 F.3d 133, 138 (2d Cir. 2000) (“The power to dismiss a duplicative lawsuit is meant to foster judicial economy and the ‘comprehensive disposition of litigation.’” (citing Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co., 342 U.S. 180, 183 (1952))); Oliney v. Gardner, 771 F.2d 856, 859 (5th Cir. 1985) (“When a plaintiff files a second complaint alleging the same cause of action as a prior, *pending*, related action, the second complaint may be dismissed.”) (emphasis in original); Walton v. Eaton Corp., 563 F.2d 66, 70 (3d Cir. 1977) (“[I]t is clear that [plaintiff] had no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.”)).

As Plaintiff already filed a cause of action on a previous occasion in which he made the same assertions as he does in his Complaint in this case, the Court should **DISMISS** Plaintiff's Complaint as duplicative.

II. Leave to Appeal *in Forma Pauperis*

The Court should also deny Plaintiff leave to appeal *in forma pauperis*.¹ Though Plaintiff has, of course, not yet filed a notice of appeal, it would be appropriate to address these issues in the Court's order of dismissal. Fed. R. App. P. 24(a)(3) (trial court may certify that appeal is not taken in good faith "before or after the notice of appeal is filed").

An appeal cannot be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). Good faith in this context must be judged by an objective standard. Busch v. County of Volusia, 189 F.R.D. 687, 691 (M.D. Fla. 1999). A party does not proceed in good faith when he seeks to advance a frivolous claim or argument. See Coppedge v. United States, 369 U.S. 438, 445 (1962). A claim or argument is frivolous when it appears the factual allegations are clearly baseless or the legal theories are indisputably meritless. Neitzke v. Williams, 490 U.S. 319, 327 (1989); Carroll v. Gross, 984 F.2d 392, 393 (11th Cir. 1993). An *in forma pauperis* action is frivolous, and thus, not brought in good faith, if it is "without arguable merit either in law or fact." Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002); see also Brown v. United States, Nos. 407CV085, 403CR001, 2009 WL 307872, at *1–2 (S.D. Ga. Feb. 9, 2009).

Based on the above analysis of Plaintiff's action, there are no non-frivolous issues to raise on appeal, and an appeal would not be taken in good faith. Thus, the Court should **DENY** Plaintiff *in forma pauperis* status on appeal.

¹ A certificate of appealability is not required in this Section 1983 action.

CONCLUSION

The Court **DENIES** Plaintiff's Motion for Leave to Proceed *in Forma Pauperis* and **DISMISSES** as moot Plaintiff's Motion for Leave to File an Amended Complaint. (Docs. 2, 3.) I **RECOMMEND** the Court **DISMISS** Plaintiff's Complaint, **DIRECT** the Clerk of Court to **CLOSE** this case and enter the appropriate judgment of dismissal, and **DENY** Plaintiff leave to appeal *in forma pauperis*.

The Court **ORDERS** any party seeking to object to this Report and Recommendation to file specific written objections within fourteen (14) days of the date on which this Report and Recommendation is entered. Any objections asserting that the Magistrate Judge failed to address any contention raised in the Complaint must also be included. Failure to do so will bar any later challenge or review of the factual findings or legal conclusions of the Magistrate Judge. See 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140 (1985). A copy of the objections must be served upon all other parties to the action.

Upon receipt of Objections meeting the specificity requirement set out above, a United States District Judge will make a *de novo* determination of those portions of the report, proposed findings, or recommendation to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the Magistrate Judge. Objections not meeting the specificity requirement set out above will not be considered by a District Judge. A party may not appeal a Magistrate Judge's report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. Appeals may be made only from a final judgment entered by or at the direction of a District Judge.

The Court **DIRECTS** the Clerk of Court to serve a copy of this Report and Recommendation upon Plaintiff.

SO ORDERED and **REPORTED** and **RECOMMENDED**, this 27th day of July, 2018.



R. STAN BAKER
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA